IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION

CHURCH OF SCIENTOLOGY OF CALIFORNIA,

Plaintiff,

vs.

GABRIEL CAZARES,

Defendant.

Case No. 76-86 Civ. T-K

FILED
TAMPA, FLA.
OCT 20 1976
WESLEY R. THIES
CLERK

ORDER

The Court has for consideration the question of the award of attorneys' fees in this action, which was grounded in part in 42 U.S.C. 1983.

In general, an award of attorneys' fees may be made against a party who has proceeded in bad faith. Christianburg Garment Co. v. E.E.O.C., 98 S.Ct. 694, 699 (1978). Defendant, the prevailing party herein, does not allege in terms the presence of bad faith.

In actions grounded in 42 U.S.C. 1983, however, the award of attorneys' fees is governed also by 42 U.S.C. 1988, which states in pertinent part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

The Court's discretion is limited, however, to the extent that prevailing defendant can recover only if plaintiff's claim was "frivolous, unreasonable, or groundless, or . . . plaintiff continued to litigate after it clearly became so." Lopez v. Aransas Cty. Independent School District, 570 F.2d 541, 545 (5th Cir. 1978), citing Christianburg Garment Co. v. E.E.O.C., supra at 701.

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The first question that must be decided is whether this standard can be applied to the entire pleadings herein, or whether it may apply only to the 1983 allegations. The terms of the statute quoted above would not preclude an award for the entire case, and at least one court has found that the provision applies to the entire case where plaintiff joins claims some of which qualify for fees under 42 U.S.C. 1988, and which ordinarily would be tried in one proceeding. Southeast Legal Defense Group v. Adams, 436 F.Supp. 891, 894 (D.Ore.1977). The Court concludes that attorneys' fees may be awarded for the entire case, if otherwise appropriate.

The Court proceeds to the question whether plaintiff's claim was "frivolous, unreasonable, or groundless." This case arose under unusual circumstances. The Fort Harrison Hotel in Clearwater, Florida, was acquired in October 1975 by Southern Land and Development and Leasing Corp., about which little was known. Personnel of the corporation asserted that United Churches of Florida, Inc., a multi-denominational organization, would use the hotel. When it was learned finally that plaintiff Church of Scientology would in fact be the principal user of the hotel, defendant Gabriel Cazares, then Mayor of Clearwater, criticized plaintiff's activities. Such criticism, and subsequent actions taken to initiate investigations of plaintiff's activities, formed the basis of plaintiff's complaint.

The Court believes that said complaint was frivolous, unreasonable, and groundless. The groundlessness of plaintiff's complaint is demonstrated by the lack of evidentiary support for plaintiff's claims and the circumstances in which they arose. The statements and actions complained of took

place at a time when an organization about which little was known was seeking to acquire, and in fact acquiring, a major city landmark, and doing so in a manner that aroused a general public interest. In the public debate over the propriety of plaintiff's actions, and their potential effect, plaintiff saw fit to initiate this action. The record now reveals that there was no basis for this action, but it was initiated nevertheless in an apparent effort to influence the source of criticism rather than respond to the criticism in debate. Plaintiff admitted to being a "public figure" and had no cause to complain of mere public discussion of its activities. The Court finds that the suit was frivolous and groundless, and that its initiation under the circumstances was unreasonable.

Much has been said by both plaintiff and defendant about the Church of Scientology's "fair game" policy, and material introduced into the record could support the conclusion that it is plaintiff's policy to be the sole source of information about itself, and to attempt to quell dissenting views offered by its opponents, who may be labeled "Suppressive Persons," by the harassing use of the legal process. The Court makes no findings in this regard, as it is sufficient to hold that plaintiff's complaint was unreasonable, frivolous and groundless.

The Court is not given pause by the fact that plaintiff sought to voluntarily dismiss the complaint and that defendant opposed the motion. The dismissal sought was without prejudice, and the action could have been initiated at a later time had the Court granted the motion. The Court believes that defendant was entitled to pursue the matter to his vindication, as he did.

In accordance with the foregoing, the Court concludes that an award of attorneys' fees as part of the costs is appropriate. Defendant is directed to submit within ten (10) days affidavits or other evidence it wishes the Court to consider in determining the amount of fees to be awarded. Plaintiff shall have ten (10) days thereafter to make whatever objections it wishes to make. The attention of the parties is directed to Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-719 (5th Cir.1974).

The Court also has for consideration the motion for substitution of counsel for plaintiff. It appears that plaintiff has consented, and the Court is of the opinion that the motion should be, and it is hereby, granted.

In view of the Court's disposition of the above, defendant's motion to strike affidavit is denied as moot.

IT IS SO ORDERED at Tampa, Florida this 20 day of October, 1978.

BEN KRENTZMAN
UNITED STATES DISTRICT JUDGE